

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS

ELIZABETH L. SHIELDS,
Plaintiff

v.

KENNETH VAN VOORHIS, JR.,
JOSEPH ELETTO TRANSFER, INC. and
AA TRUCK RENTING CORPORATION,
Defendants

CASE NO. 04 12431GAO

ANSWER AND JURY CLAIM OF DEFENDANTS KENNETH VAN VOORHIS, JR., JOSEPH
ELETTO TRANSFER, INC., AA TRUCK RENTING CORPORATION

THE DEFENDANTS, KENNETH VAN VOORHIS, JR., JOSEPH ELETTO TRANSFER, INC.
AND AA TRUCK RENTING CORPORATION CLAIM A TRIAL BY JURY AS TO ALL
ISSUES.

First Defense

PARTIES

1. The defendants can neither admit nor deny the allegations of Paragraph No. 1 of plaintiff's complaint because they are without knowledge or information sufficient to form a belief as to the truth of said allegations.
2. The defendant, Kenneth Van Voorhis, Jr., admits the allegations of Paragraph No. 2 of plaintiff's complaint.
3. The defendant, Joseph Eletto Transfer, Inc., admits the allegations of Paragraph No. 3 of plaintiff's complaint.
4. The defendant, AA Truck renting Corporation, admits the allegations of Paragraph No. 4 of plaintiff's complaint.

JURISDICTION

5. The defendants deny the allegations of paragraph No. 5 of plaintiff's complaint

COUNT I

The defendants, Joseph Eletto Transfer, Inc. and AA Truck Renting Corporation do not respond to the allegations of Count I Paragraph Nos. 6-10, of the plaintiff's complaint because the said allegations do not pertain to them. To the extent that said allegations maybe deemed to pertain to these defendants, Joseph Eletto Transfer, Inc. and AA Truck Renting Corporation deny the allegations of Count I Paragraph Nos. 6-10 of the plaintiff's complaint.

6. The defendant, Kenneth Van Voorhis, Jr. repeats and realleges his answers to Paragraph Nos. 1-6 of plaintiff's complaint as if set forth in full herein.
7. The defendant, Kenneth Van Voorhis, Jr., admits the allegations of Paragraph No. 7 of plaintiff's complaint.
8. The defendant, Kenneth Van Voorhis, Jr., admits the allegations of Paragraph No. 8 of plaintiff's complaint.
9. The defendant, Kenneth Van Voorhis, Jr., denies the allegations of Paragraph No. 9 of plaintiff's complaint.
10. The defendant, Kenneth Van Voorhis, Jr., denies the allegations of Paragraph No. 10 of plaintiff's complaint.

COUNT II

The defendants, Kenneth Van Voorhis, Jr., and AA Truck Renting Corporation do not respond to the allegations of Count I Paragraph Nos. 6-10, of the plaintiff's complaint because the said allegations do not pertain to them. To the extent that said allegations maybe deemed to

pertain to these defendants, Kenneth Van Voorhis, Jr., and AA Truck Renting Corporation deny the allegations of Count 2 paragraphs 11-15 of the plaintiff's complaint.

11. The defendant, Joseph Eletto Transfer, Inc., repeats and realleges his answers to Paragraph Nos. 1-10 of plaintiff's complaint as if set forth in full herein.
12. The defendant, Joseph Eletto Transfer, Inc., denies the allegations of Paragraph No. 12 of plaintiff's complaint.
13. The defendant, Joseph Eletto Transfer, Inc., denies the allegations of Paragraph No. 13 of plaintiff's complaint.
14. The defendant, Joseph Eletto Transfer, Inc., denies the allegations of Paragraph No. 14 of plaintiff's complaint.
15. The defendant, Kenneth Van Voorhis, Jr., denies the allegations of Paragraph No. 15 of plaintiff's complaint.

COUNT III

The defendants, Kenneth Van Voorhis, Jr., and Joseph Eletto Transfer, Inc., do not respond to the allegations of Count I Paragraph Nos. 16-20, of the plaintiff's complaint because the said allegations do not pertain to them. To the extent that said allegations maybe deemed to pertain to these defendants, Kenneth Van Voorhis, Jr., and Joseph Eletto Transfer, Inc., deny the allegations of Count III paragraphs 16-20 of the plaintiff's complaint.

16. The defendant, Joseph Eletto Transfer, Inc., repeats and realleges his answers to Paragraph Nos. 1-15 of plaintiff's complaint as if set forth in full herein.
17. The defendant, Joseph Eletto Transfer, Inc., denies the allegations contained in Paragraph No. 17 of plaintiff's complaint.

18. The defendant, Joseph Eletto Transfer, Inc., denies the allegations contained in Paragraph No. 18 of plaintiff's complaint.
19. The defendant, Joseph Eletto Transfer, Inc., denies the allegations contained in Paragraph No. 19 of plaintiff's complaint.
20. The defendant, Joseph Eletto Transfer, Inc., denies the allegations contained in Paragraph No. 20 of plaintiff's complaint.

SECOND DEFENSE

And further answering, the defendants say that the injuries and damages alleged were caused in whole or in part by negligence of the plaintiffs to a degree greater than any alleged negligence of the defendants.

THIRD DEFENSE

And further answering, the defendants say that the plaintiffs' claims against the defendants for alleged pain and suffering, is barred by the applicable provisions of G.L. c. 231, §6D.

FOURTH DEFENSE

And further answering, the defendants say that the plaintiffs' claims against the defendants for alleged medical expenses and loss of earnings, is barred by the applicable provisions of G.L. c. 90, §34M.

FIFTH DEFENSE

And further answering, the defendants say that the injuries and damages alleged were not caused by the acts of any person for whose conduct the defendants was legally responsible.

SIXTH DEFENSE

And further answering, the defendants say that the motor vehicle involved in the alleged accident or collision was not then being operated by and under the control of a person for whose conduct the defendants were legally responsible.

SEVENTH DEFENSE

And further answering, the defendants say that this action was not commenced within the time prescribed by the applicable statutes of limitations.

EIGHTH DEFENSE

And further answering, the defendants say that the plaintiffs' Complaint in the above action fails for insufficiency of process and insufficiency of service of process upon the defendant in accordance with the applicable provisions of law. Wherefore, the defendants move that this Amended Complaint be dismissed under the provisions of Fed. R. Civ. P. 12(b)(4) and 12(b)(5) due to the insufficiency of process and insufficiency of service of process.

NINTH DEFENSE

And further answering, the defendants say that at the time of the alleged accident, the plaintiff was guilty of a violation of the law, which contributed to the alleged accident.

TENTH DEFENSE

And further answering, the defendants say that the plaintiff's complaint fails to state a claim upon which relief can be granted. Wherefore, the defendants move pursuant to Fed. R. Civ. P. 12(b)(6) that plaintiff's complaint be dismissed, with costs to said defendants.

WHEREFORE, the defendants, Kenneth Van Voorhis, Jr., Joseph Eletto Transfer, Inc. and AA Truck Renting Corporation, move that Counts I through III of plaintiffs' complaint be dismissed, with prejudice, together with costs.

MARTIN, MAGNUSON, McCARTHY & KENNEY

By: 

Paul R. Keane; BBO No.: 262880

Michael J. Keefe BBO No.: 263751

Kenneth Van Voorhis, Jr., Joseph Eletto Transfer, Inc. and AA
Truck Renting Corporation

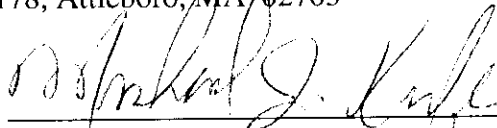
Attorneys for the Defendants,

101 Merrimac Street

Boston, MA 02114-4716

CERTIFICATE OF SERVICE

I, Michael J. Keefe, attorney for the defendants, East Coast Auto Sales, Inc. and Carroll Copeland, hereby certify that on the 3rd day of March, 2005, I served a copy of the above *answer* by mailing a copy thereof, postage prepaid to: Sal J. Germani, Esq., Germani & Germani, P.C. 50 Union Street, P. O. Box 2178, Attleboro, MA 02703

A handwritten signature in dark ink, appearing to read "Paul R. Keane", is written over a horizontal line.

Paul R. Keane; BBO No.: 262880

Michael J. Keefe, BBO NO. 263751

Martin, Magnuson, McCarthy & Kenney

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